IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5518 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHULABHAI MOHANBHAI PRAJAPATI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR.RAJESH B SONI for Petitioner(s) : 1,
Mr.S.S.Patel, learned AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 25/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing this petition under Article 226 of the Constitution, the petitioner i.e. Dhulabhai Mohanbhai Prajapati, through his Power of Attorney Holder Kanubhai Sendhabhai Prajapati, has prayed to issue an appropriate writ or order to set aside the declaration made by the State Government under Section 6 of the Land Acquisition Act, 1894 ('the Act' for short) by which it is decided to acquire Revenue Survey Nos.531 to 535, 541 and 542 situated in the sim of village Detrojpura, Taluka and District – Mehsana for public purpose of construction of Detrojpura approach road. The petitioner has further prayed to direct the Land Acquisition Officer to give opportunity of hearing to the petitioner in the inquiry which may be made under Section 5A of the Act pursuant to the direction of this Court.

2. The petitioner is owner of agricultural lands bearing Survey Nos.531 and 541 situated in the sim of village Detrojpura, Taluka and District Mehsana. A proposal was received by the State Government to acquire certain Revenue Survey Numbers of village Detrojpura for the public purpose of construction of Detrojpura approach road. On consideration of the said proposal, the State Government was satisfied that certain revenue Survey Numbers of village Detrojpura were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on August 31,2004. Thereafter, notices were issued to the land owners. Some of them had objected to the proposed acquisition. After considering their objections, the Land Acquisition Officer forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that lands, which were specified in the Notification published under Section 4(1) of the Act, were needed for public purpose of

construction of Detrojpura approach road. Therefore, a declaration was made under Section 6 of the Act, which was published in the Official Gazette on June 28,2005. The case of the petitioner is that Notification published under Section 4(1) of the Act was not published in two daily news papers circulating in the locality as a result of which the petitioner could not lodge his objection nor the petitioner was heard in the inquiry, which was conducted by the Land Acquisition Officer under Section 5A of the Act. According to the petitioner publication of the declaration made under Section 6 of the Act on the basis of report of the Special Land Acquisition Officer, Mehsana is bad in law and, therefore, liable to be set aside. Under the circumstances, the petitioner has filed the instant petition and claimed the reliefs, to which reference is made earlier.

3. On service of notice Mr.Rameshchandra Ratilal Thakkar, Special Land Acquisition Officer, Mehsana has filed affidavit-in-reply controverting the averments made in the petition. In the reply it is

mentioned that the petitioner had filed Special Civil Suit No.131/2004 in the Court of learned Civil Judge (SD), Mehsana and challenged the notification published under Section 4(1) of the Act but the learned Judge had rejected the application for injunction submitted by the petitioner vide order dated January 20,2005 and, therefore, the petitioner is not entitled to the reliefs claimed in the petition. It is mentioned in the reply that not only the petitioner was served with notice as required by Section 4 of the Act but the petitioner was afforded opportunity of hearing and that after hearing him and considering the objections raised by the petitioner, the report, as required by Section 5A(2) of the Act, was forwarded to the State Government. Mr.Thakkar has produced copy of the objections raised by the petitioner at Annexure 'II' with his reply. By filing the reply it is claimed that the petition, which has no substance, should be dismissed by the Court.

4. This Court has heard Mr.R.B.Soni, learned counsel for the petitioner and Mr.S.S.Patel, learned AGP for the respondents. During the course of hearing

of the petition, the learned counsel for the petitioner has produced death certificate issued by Talati-cum-Mantri, Lakhwad Gram Panchayat, Taluka and District Mehsana under the provisions of Births and Deaths Registration Act, 1969 for perusal of the Court. It is ordered to be taken on the record of the petition. It indicates that Mr.Prajapati Dhulabhai Mohanbhai expired at village Detrojpura on June 21,2006. Mr. R.B.Soni, learned counsel for the petitioner, has stated at the Bar that Mr.Kanubhai Sendhabhai Prajapati, who was holding power of Attorney of the petitioner, has not responded to his letters nor given instructions to enable him to bring heirs of deceased Dhulabhai Mohnabhai Prajapati on record of the petition and, therefore, appropriate orders be passed by the Court.

5. It may be stated that the instant petition was filed by Mr.Kanubhai Sendhabhai Prajapati as Power of Attorney Holder of deceased Dhulabhai Prajapati. On death of Dhulabhai Prajapati the Power of Attorney Holder executed by him in favour of Mr.Kanubhai Sendhabhai Prajapati would come to an end and would

not survive. It is not the case of Mr.Kanubhai Prajapati that a fresh Power of Attorney has been executed by the heirs and legal representatives of deceased Dhulabhai in his favour. This is a personal action, which was instituted by the deceased and, therefore, the personal action would die with the death of the deceased on the maxim *actio personalis moritur cum persona*. Having regard to the facts of the case, this court is of the opinion that on the death of the original petitioner i.e. Mr.Dhulabhai the granting of reliefs would be nugatory. Therefore, the petition is liable to be dismissed on the ground that the original petitioner has now expired and his Power of Attorney is now not entitled to prosecute the petition, more particularly when the heirs and legal representatives of the deceased are not brought on the record of the case.

6. Even otherwise, from the record of the case it is evident that in the inquiry, which was conducted under Section 5A of the Act, opportunity of hearing was afforded to the petitioner. This is quite evident from the contents of notice dated March 24,2005

produced on the record of the case at page 45 of the compilation. Thus, a false statement was made on oath by the petitioner that he was not afforded opportunity of being heard in the inquiry, which was conducted by the Special Land Acquisition Officer under Section 5A of the Act. The record further shows that notices were handed over to Talati, Lakhwad Gram Panchayat, Mehsana to be served on the petitioner and other interested persons. This is quite evident from the contents of letter dated May 30,2005 addressed by the Special Land Acquisition Officer, Mehsana to Talati of Lakhwad village. Further the record shows that the petitioner had remained present before the Special Land Acquisition Officer and his statement was recorded on April 8,2005. This is evident from the statement of the petitioner produced by the Special Land Acquisition Officer alongwith his affidavit in reply. What is relevant to notice is that the petitioner and others had lodged objections on October 18, 2004 and after considering the same, report under Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. Under the circumstances, the claim, which

is advanced on behalf of the petitioner that the petitioner was not afforded opportunity of being heard before forwarding report under Section 5A(2) of the Act and, therefore, declaration made under Section 6 of the Act is liable to be set aside, has no substance whatsoever. The petition, which lacks merits, is liable to be dismissed.

7. For the foregoing reasons, the petition fails and is dismissed. Notice is discharged. There shall be no order as to costs.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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